



Bargaining Obligations During a National Emergency

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Bargaining Obligations During a National Emergency

- **Presidential Proclamation 7463,
Declaration of National
Emergency by Reason of Certain
Terrorists Attacks**
- **Federal Service Labor-
Management Relations Statute**



Proclamation 7463 (September 14, 2001)

- **Published in Federal Register, Volume 66, No. 181, September 18, 2001.**
- **Declared national emergency since September 11, 2001, due to terrorists attacks and continued threats of attacks.**
- **Continued national emergency on September 12, 2002, for one additional year because terrorist threat continues.**



Federal Service Labor- Management Relations Statute

- **Proclamation 7463 does not exclude agencies from statutory obligations.**
- **5 USC Chapter 71 continues to apply.**
- **Bargaining obligations must be satisfied during the national emergency.**
- **5 USC Chapter 71 does provide some options in emergency situations.**



Management Rights

- **5 USC 7106(a)(2)(D) states that management has the right “to take whatever actions may be necessary to carry out the agency mission during emergencies.”**
- **Federal Labor Relations Authority (FLRA) recognizes instances where a change must be implemented due to an emergency and with post-implementation bargaining.**



Management Rights [2]

- **If immediate response by management is required, advise union of changes and offer post-implementation bargaining.**
- **If any agreement is reached with union on the change, agreement could be applied retroactively if practical to do so.**



Management Rights [3]

- **FLRA has rarely accepted agency unilateral conditions of employment changes in alleged emergency situations.**
- **FLRA has established a challenging standard that must be satisfied.**
- **FLRA has ruled that the change being made must concern an emergency that necessitates immediate action.**



Management Rights [4]

- **National emergency is NOT in itself a basis for asserting that any unilateral changes are necessary due to an emergency under 5 USC Chapter 71.**
- **Management must establish that an “overriding exigency” existed that required an immediate response by agency.**



Management Rights [5]

- **FLRA rejected agency's contention that Operation Desert Shield constituted an emergency situation requiring an immediate response – 43 FLRA 1565.**
- **FLRA stated that agency must do more than make a bare claim assertion that certain actions (i.e. bargaining) cannot be taken because of a military operation.**



Management Rights [6]

- **Situations are more likely to involve emergencies that do not require immediate response, but near future responses.**
- **Unions should be notified and bargaining process initiated, if requested.**
- **Bargaining 'possibly' may not be completed before change must be made.**
- **Post-implementation bargaining should occur after change is made.**



Management Rights [7]

- **Management would assert that unilateral change is “necessary for the functioning of the agency.”**
- **Management must establish with FLRA that a delay in implementing change would impede agency’s ability to “effectively and efficiently carry out its mission.”**



Flexible and Compressed Work Schedules

- **Work Schedules Act - establishment and termination of alternative work schedules fully negotiable.**
- **5 USC § 6131 – adverse agency impact**
 - reduction of agency productivity;
 - diminished level of services to public; or
 - increase in cost of agency operations.
- **Federal Service Impasses Panel (FSIP) – final jurisdiction on disputes.**



Flexible and Compressed Work Schedules [2]

- **Agency defense in unfair labor practice due to unilateral termination is change was for the “necessary functioning of the agency.”**
- **Shortage of staff due to Operation Desert Shield was not enough to satisfy FLRA – 44 FLRA 599.**
- **If adverse agency impact is not supported, FSIP will order agency to restore schedule.**



9/11 Unfair Labor Practice Issues

- **Various unfair labor practice charges filed over failure to negotiate termination of compressed work schedules.**
- **Unfair labor practice charge filed for assigning additional duties of checking identifications at entrances to buildings.**
 - **Union not notified in advance;**
 - **Union later offered opportunity to bargain;**
 - **Union declined management offer.**



9/11 Unfair Labor Practice Issues [2]

- **Informal unfair labor practice charge filed concerning curfew hours and restricted areas that overseas civilians could not patronize. Management rescinded order.**
- **Unfair labor practice charge threatened concerning practice of allowing employees to wear costumes on Halloween.**
 - **Commander determined that wearing masks while driving onto base not permitted.**
 - **Union objected and threatened ULP.**



9/11 Unfair Labor Practice Issues [3]

- **Unfair labor practice charge filed concerning management prohibition on use of government computers for personal reasons (in name of national security). Policy later withdrawn by management.**
- **Unfair labor practice charge filed concerning integration of military security personnel with civilian security personnel.**



9/11 Negotiation Request

- **Civilian employees assigned task of checking identification cards of people entering buildings located on installation.**
- **Union submitted proposals in response:**
 - **Door guard duty / ID checkers will be done on a volunteer basis.**
 - **If no volunteers, management must document to union that it has exhausted all of its military personnel resource pool.**



9/11 Negotiation Request [2]

Union proposals on ID checks:

- **Management must document to union that it has looked at its workforce for volunteers.**
- **Employees will be:**
 - **Trained (self defense, HAZMAT, stress, security, etc);**
 - **Given a cell phone for emergencies;**
 - **Given document from base commander on job requirements;**
 - **Given document from commander on how to respond to events when checking IDs.**



9/11 Negotiation Request [3]

Union proposals on ID checks:

- Employees will be 100% compensated if injured in the line of their duties. No charge to sick or annual leave.**
- If employee is killed while performing duties, the government and the supervisor will be held responsible for placing the employee in a dangerous position.**
- Employees will not have job performance ratings adversely affected or be disciplined when assuming these duties.**



Bargaining Obligations – Post 9/11

- **Existing case law concerns Operation Desert Shield and Operation Desert Storm.**
- **Federal Labor Relations Authority must recognize that the world has changed and threats are more imminent for all federal facilities.**
- **National Security Personnel System may allow DoD to deal with emergency situations in a more appropriate manner.**



Questions?